

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BRUCE BIRCH

Case No.: 3:19-cv-00280-MMD-WGC

Plaintiff

Order

V.

Re: ECF No. 1-2

PAM DELPORTO, et al.,

Defendants

Before the court is Plaintiff's motion for leave to file his complaint under seal. (ECF No.

"Historically, courts have recognized a general right to inspect and copy public records and documents, including judicial records and documents." *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted).

14 "Throughout our history, the open courtroom has been a fundamental feature of the American
15 judicial system. Basic principles have emerged to guide judicial discretion respecting public
16 access to judicial proceedings. These principles apply as well to the determination of whether to
17 permit access to information contained in court documents because court records often provide
18 important, sometimes the only, bases or explanations for a court's decision." *Oliner v.*
19 *Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp.*
20 *v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

21 Documents that have been traditionally kept secret, including grand jury transcripts and
22 warrant materials in a pre-indictment investigation, come within an exception to the general right
23 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of

1 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The
2 presumption of access is 'based on the need for federal courts, although independent—indeed,
3 particularly because they are independent—to have a measure of accountability and for the
4 public to have confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler*
5 *Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016)
6 (quoting *United States v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley*
7 *Broad Co. v. U.S. Dist. Ct., D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

8 There are two possible standards a party must address when it seeks to file a document
9 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,
10 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only
11 when it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without
12 relying on hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must
13 "'conscientiously balance[] the competing interests of the public and the party who seeks to keep
14 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the
15 sound discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599
16 (1978)). "Examples include when a court record might be used to 'gratify private spite or
17 promote public scandal,' to circulate 'libelous' statements, or 'as sources of business information
18 that might harm a litigant's competitive standing.'" *Id.*

19 The good cause standard, on the other hand, is the exception to public access that has
20 been typically applied to "sealed materials attached to a discovery motion unrelated to the merits
21 of the case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which
22 governs the issuance of protective orders in the discovery process: The court may, for good
23

1 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or
2 undue burden or expense." *Id.*

3 The Ninth Circuit has clarified that the key in determining which standard to apply is
4 whether the documents proposed for sealing accompany a motion that is "more than tangentially
5 related to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the
6 compelling reasons standard is applied. If not, the good cause standard is applied.

7 Here, Plaintiff seeks to file his complaint under seal which sets forth the allegations
8 pertaining to the merits of his case. Therefore, the compelling reasons standard applies.

9 The court finds compelling reasons to seal the complaint because it is likely that public
10 knowledge of the information contained in the complaint may endanger Plaintiff's safety.
11 Therefore, Plaintiff's motion (ECF No. 1-2) is **GRANTED**.

12 Plaintiff is reminded that the court will still need to review and screen his complaint
13 before docketing and service of defendants to identify any colorable claims and dismiss any
14 claims that are "frivolous, malicious, or fail to state a claim upon which relief may be granted" or
15 if the complaint "seeks monetary relief from a defendant who is immune from such relief." See
16 28 U.S.C. § 1915A(a), (b). This process may take many months.

17 **IT IS SO ORDERED.**

18 Dated: May 30, 2019

19 
20 William G. Cobb
21 United States Magistrate Judge

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